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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1149

CHRISTO JOHN JOSSEFIDES, DANIEL PATRICK BOURQUE and NICHOLAS SALVATORI CORTESE, *Petitioners*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	2
Conclusion	3
Certificate of Service	3
Appendix A	5

INDEX OF AUTHORITIES

CASES

	Page
Amador-Gonzales v. United States, 391 F.2d 308	2
Barnes v. Texas, 380 U.S. 253	2
Coolidge v. New Hampshire, 91 S.Ct. 2022 (1971)	2
Texas v. Gonzales, 388 F.2d 145 (1968)	2

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals.

OPINIONS BELOW

The Opinion of the Court of Appeals dated November 30, 1973, and the Order denying the Petition for Rehearing dated December 27, 1973, are in Appendix A.

JURISDICTION

The jurisdiction of this court is invoked under 28 United States Code, Section 1254(1).

QUESTIONS PRESENTED

Whether Petitioners were convicted based on evidence that was the result of an illegal search and seizure.

STATEMENT OF THE CASE

All Petitioners were arrested at Harlingen, Texas, at the Holiday Inn Motel. (R. 17-247) The marijuana involved in the case was found in suitcases in the trunk of two vehicles seized at the motel. The search was a warrantless one and there existed no exigent circumstances since the vehicles were not being operated or moved at the time of the seizure.

The decision of the Court of Appeals is in conflict with *Barnes v. Texas*, 380 U.S. 253 and *Amador-Gonzales v. United States*, 391 F.2d 308. The record below clearly establishes that the arrest and seizure were unwarranted intrusions by the Government. *Texas v. Gonzales*, 388 F.2d 145 (1968) and *Coolidge v. New Hampshire*, 91 S.Ct. 2022 (1971).

The search in this case of the suitcases inside the vehicles was without probable cause.

CONCLUSION

For the reasons given above, a Writ of Certiorari should be granted.

Christo John Jossefides, Daniel Patrick Bourque and Nicholas Salvatori Cortese, *Petitioners*

HARDY, SHARPE & RODRIGUEZ

By_____
THOMAS G. SHARPE, JR.
Of Counsel
1010 East Washington Street
Brownsville, Texas 78520
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon the Solicitor General of the United States, Department of Justice, Washington, D. C. 20530 and Mr. Robert Darden, Assistant United States Attorney, Post Office Box 61129, Houston, Texas 77061 by United States Mail on this the 14th day of January, 1974, and a printed copy was served in like manner on this the _____ day of _____, 1974.

_____
THOMAS G. SHARPE, JR.

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-3041
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CHRISTO JOHN JOSSEFIDES, DANIEL PATRICK BOURQUE and NICHOLAS SALVATORI CORTESE,
Defendants-Appellants.

Appeals from the United States District Court for the Southern District of Texas

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(November 30, 1973)

Before BROWN, Chief Judge, DYER and SIMPSON, Circuit Judges.

PER CURIAM: AFFIRMED.[1] See Local Rule 21.[2]

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* Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

1. We find without merit the contentions of appellants that the search of the automobiles and the seizure of the marijuana in them was illegal, and that the district court erred in charging the jury.

2. See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-3041
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CHRISTO JOHN JOSSEFIDES, DANIEL PATRICK BOURQUE and NICHOLAS SALVATORI CORTESE,
Defendants-Appellants.

Appeals from the United States District Court for the Southern District of Texas

---

ON PETITION FOR REHEARING

(December 27, 1973)

Before BROWN, Chief Judge, DYER and SIMPSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

CHRISTO JOHN JOSSEFIDES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1149

CHRISTO JOHN JOSSEFIDES, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners challenge the warrantless search of their vehicles. They also allege that probable cause was lacking for the search of suitcases which were found in the trunks of the vehicles.

Following a jury trial in the United States District Court for the Southern District of Texas, petitioners were convicted of conspiracy to possess and possession of marijuana with intent to distribute, in violation of 21 U.S.C. 846 and 841(a)(1). Petitioner Jossefides was sentenced to four years' imprisonment with a special parole term of three years on each count, the sentences to run concurrently. Petitioner Bourque was sentenced to consecutive terms of one year's imprisonment with a special parole term of three years on count one and five years' imprisonment with a special parole term of two years

on count two. The sentence imposed on count two was suspended and Bourque was placed on probation with supervision for five years. Petitioner Cortese was sentenced to concurrent terms of five years' imprisonment and was fined $500 on each count with four years and eight months suspended and with a special parole term of two years on each count. He was also placed on probation with supervision for five years.

Special Agent Beaupre of the Customs Agency Service, McAllen, Texas, testified that he commenced surveillance of petitioners on September 23, 1972. On September 30, 1972, he observed petitioner Jossefides and co-defendant Ables at the Ramada Inn in McAllen, Texas, and the Fontana Motel in Mission, Texas (Tr. 67-68).[1] On October 22, 1972, he observed petitioners Bourque and Cortese at the Sheraton Fairway Hotel in McAllen, Texas, within five miles of the Mexican border. They arrived at approximately 8:00 p.m. in a white-over-tan Plymouth (Tr. 69). At approximately 10:30 p.m., petitioner Jossefides and co-defendant Ables arrived in a two-tone brown Oldsmobile, parked next to the Plymouth, and entered room 163 (Tr. 70). Within half an hour, Lazaro Gonzalez, a known trafficker in narcotics, arrived in a late model blue Chevrolet and entered room 163 (Tr. 70-71). Thereafter, petitioner Jossefides, Gonzalez, and co-defendant Ables came out of the room, opened the trunk of the Oldsmobile, took four standard size black and red plaid suitcases from the trunk, and placed them into the trunk of the Chevrolet (Tr. 71-72). Later in the evening more suitcases were transferred from the room to the Oldsmobile. Petitioner Cortese and his wife thereafter departed in the loaded Oldsmobile vehicle (Tr. 76).

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[1] "Tr." refers to the transcript of the proceedings at trial contained in two consecutively paginated volumes.

On the following morning, petitioner Bourque left in a Plymouth Fury with Texas license plates (Tr. 20, 59, 79) and proceeded to the Holiday Inn in Harlington, Texas, where petitioner Jossefides had registered in rooms 253 and 255 and where petitioner Cortese subsequently registered in room 163 (Tr. 20-21, 79-80). Petitioner Bourque occupied room 121 (Tr. 80). At approximately 1:30 p.m., petitioner Jossefides and co-defendant Ables left their rooms. Ables went to petitioner Bourque's room, and Jossefides went to the Oldsmobile parked in the Holiday Inn, which was the same car observed in McAllen on the previous night. Ables then entered the Plymouth, and he and petitioner Jossefides left in the two vehicles (Tr. 82-83).

Ables returned at approximately 6:00 p.m. and parked in front of room 121 (Tr. 83). After visiting with one Jerry Rooker, Ables departed from the hotel in a blue Chevrolet (Tr. 86).

On the following morning at approximately 1:40 a.m., Ables returned and backed the Chevrolet into a space opposite room 121 (Tr. 87, 89). As he opened the door, agent Beaupre observed objects in the back seat and saw Ables arranging a blanket over them. At approximately 2:35 a.m., petitioner Jossefides returned in the Oldsmobile and backed the car into a spot next to the Chevrolet (Tr. 88).

Agent Beaupre, accompanied by Agent Vandever, went to inspect the two vehicles. The agents detected the odor of marijuana emanating from the trunks of the vehicles (Tr. 89, 166). Agent Vandever testified that at approximately 3:30 a.m. on October 24, he crawled through the bushes and then between the two vehicles parked in the Holiday Inn lot and put his nose down close to the trunk area and smelled marijuana in great

quantity in the Chevrolet and the Oldsmobile (Tr. 165-167). Agent Vandever then positioned himself in some bushes eight feet from the rear of the vehicles and camouflaged himself under some leaves (Tr. 164-165).

At approximately 8:00 a.m. Ables went to the Plymouth and backed it into a position next to the Chevrolet (Tr. 95). Thereafter Rooker came out of his room and moved the Plymouth to the other side of the Oldsmobile. Rooker and Ables then opened the trunks of the cars and began transferring suitcases from one car to another (Tr. 98, 169). The suitcases were of the same description as those observed earlier in McAllen, which had been transferred into the Oldsmobile (Tr. 98).

Rooker removed a spare tire and rolled it toward Agent Vandever's position of concealment. He then removed another spare and began to hand-roll it toward Agent Vandever. Rooker rolled the tire over Agent Vandever's left elbow at which time Agent Vandever, feeling sure the discovery of his hiding place was imminent, immediately proceeded to arrest Rooker and then Ables (Tr. 169-171). The vehicles were searched, and the suitcases were found to contain marijuana (Tr. 104-105).

Shortly thereafter, Agent Beaupre entered room 121 through an open door and arrested petitioner Bourque. Upon leaving room 121, petitioner Cortese approached the scene and was arrested by Agent Beaupre (Tr. 100-102). Agent Beaupre then arrested Jossefides in his room (Tr. 103). All of the arrested suspects were given *Miranda* warnings.

The suspects were then taken to the Customs Agency Service office in Brownsville, where they were again advised of their rights (Tr. 222-223). After Cortese had been so advised, he stated that he had been recruited

to transport the marijuana for $2,000 (Tr. 225). Josse-fides also stated that his purpose in the McAllen area was to obtain marijuana (Tr. 121).

Petitioners contend that the warrantless search of the vehicles violated the Fourth Amendment.[2] The search, however, was properly made upon probable cause under exigent circumstances. A review of the record shows that, as the surveillance continued, the agents progressively obtained probable cause to believe that petitioners were in possession of marijuana. During the surveillance, petitioners were observed in the company of known narcotics dealers and were seen loading and unloading an excessive amount of luggage at two motels in separate towns near the border. They were also seen exchanging vehicles. Moreover, in the early morning hours on the day of their arrest two of the agents approached the vehicles and detected the odor of what appeared to be a large quantity of marijuana. At this point, the agents had probable cause to believe that the vehicles carried contraband.

The officers did not search the vehicle as soon as probable cause appeared, because they sought to apprehend all of the individuals involved and at the same time to insure their own safety. This was a wholly legitimate aim, which violated no rights of petitioners. The officers were not obliged to cease their investigation as soon as they possessed the minimum evidence required to support a search or arrest. See *Hoffa* v. *United States*, 385 U.S. 293, 310.

The officers halted their investigation, however, when it became evident that their surveillance had been de-

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[2]The ensuing discussion assumes, *arguendo*, that each of the petitioners has standing to challenge the search of the vehicles and the suitcases.

tected. Two of the suspects were near vehicles which could have been immediately mobilized. At that point, it was no longer possible to await the arrival of the other suspects before making an arrest; an immediate search was required to prevent evidence from being lost or destroyed. Since there was then insufficient time to obtain a warrant, it was proper for the agents to search the vehicles, which could have been moved.[3] *Chambers* v. *Maroney*, 399 U.S. 42, 51-52; *Carroll* v. *United States*, 267 U.S. 132, 153; see *Cady* v. *Dombrowski*, 413 U.S. 433. Moreover, as the above statement of the evidence shows, there was clearly probable cause to search the suitcases.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1974.

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[3]We note that the trunks of the vehicles were open and that the contraband laden suitcases were plainly visible. Accordingly the suitcases were not the product of a search. In any event, we would argue as we have in our amicus brief in *Cardwell* v. *Lewis*, No. 72-1603, argued March 18, 1974, that a warrant is not required generally to search an automobile. A copy of that brief is being sent to petitioners. Since, however, there were exigent circumstances present here, there is no need to hold this case pending the decision in *Cardwell*.

[4]Petitioners do not appear to allege that in these circumstances a warrant was required to search the suitcases. Such a claim, as we show in our memorandum in opposition to the pending petition for certiorari in *Valen* v. *United States*, No. 72-1727, would be without merit. A copy of that memorandum is being sent to petitioners.